Michael S. Lavenant, Esq. - State Bar No. 198765
michael@landeggeresq.com
LANDEGGER, BARON & LAVENANT
A Law Corporation
15760 Ventura Boulevard, Suite 1200
Encino, California 91436
Telephone: (818) 986-7561
Facsimile: (8181) 986-5147

Attorneys for Defendant R. J. Reynolds Tobacco Company

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DAWN D. RADCLIFFE, individually, and on behalf of a class of others similarly situated, Plaintiffs, vs. R. J. REYNOLDS TOBACCO COMPANY, a North Carolina Corporation, Defendants.	CASE NO.: 08 CV 0393 H POR ASSIGNED FOR ALL PURPOSES TO JUDGE LOUISA A. PORTER **JOINT MOTION TO TRANSFER MATTER TO OTHER DISTRICT COURT** CASE FILED: February 29, 2008 DISCOVERY CUT-OFF:NONE MOTION CUT-OFF:NONE TRIAL DATE: NONE

Plaintiff Dawn D. Radcliffe, the remaining Plaintiffs who have consented to join this action, and Defendant R.J. Reynolds Tobacco Company (hereinafter “the Parties”), by and through their attorneys of record, jointly move this Court to transfer this case in its entirety to the United States District Court for the Western District of Missouri, where a very similar case is pending involving the same defendant, similar claims, and plaintiffs who worked in the same job category as the plaintiffs in the instant case. The Parties hereby stipulate and agree to the following:

WHEREAS, Plaintiffs work or worked for Defendant in the position of Retail Representative. In this lawsuit, they bring a proposed class and collective action on behalf of themselves and other former and current Retail Representatives in the State of California for back wages they allege they are owed under state and federal law. However, such claims under federal law of former and current Retail Representatives throughout the country (including the State of California) are already being litigated in the United States District Court for the Western District of Missouri in a case captioned *Zola M. Marshall v. R.J. Reynolds Tobacco Company*, Case No. 07-0227-CV-W-RED (hereinafter "the *Marshall* case"), which was initiated on March 19, 2007 and in which Plaintiffs' counsel is also representing the plaintiffs therein. [1]

---

[1] In addition, a similar case was also filed in the United States District Court for the Northern District of New York by former and current Retail Representatives in the State of New York, and the plaintiffs to that action were also represented by Plaintiffs' counsel in the instant case. *Dinino v. R.J. Reynolds Tobacco Company*, Civil Action No. 08-CV-0175 (TJM-DEP). As the Parties in the instant case now do, the parties to the New York federal court action asked that Court to transfer that case in its entirety to the Western District of Missouri. The Consent Order of Transfer was entered by that Court on June 3, 2008.

WHEREAS, the *Marshall* case has progressed significantly further than the instant case. The parties to that action have engaged in some discovery, the case has been conditionally certified as a collective action under the Fair Labor Standards Act (FLSA), and notice was sent to 1,178 former and current Retail Representatives (including Plaintiffs herein and all other individuals who had worked in California as a Retail Representative during the relevant time period) informing them of that action and their right to join it. This case, on the other hand, has not progressed beyond the filing of the initial pleadings and no discovery has taken place.

WHEREAS, the Parties agree that the instant case and the *Marshall* case share similar legal issues, the identical defendant, and overlap in proposed classes of plaintiffs. In such a circumstance, there exists in the law a doctrine known as the first-filed rule (or the first-to-file rule) that provides for the dismissal, transfer, or stay of the second-filed case in favor of the first. "The purpose of the rule is 'to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.'" *White v. Peco Foods, Inc.*, Civil Action No. 4:07cv18-KS-MTP, 2008 WL 542841, at *2 (S.D. Miss. Feb. 22, 2008) (FLSA case) (citing *West Gulf Maritime Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985)).

WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that "[t]he first-to-file rule was developed to 'serve[ ] the purpose of promoting efficiency well and should not be disregarded lightly.'" *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622, 623 (9th Cir. 1991) (collecting citations). This Court has noted that "[t]he *Alltrade* court set forth three prerequisites for application of the first to file rule: (1) chronology of the two actions; (2) similarity of the parties; and (3) similarity of the issues." *Brighton Collectibles, Inc. v. Coldwater Creek, Inc.*, No. 06 CV-1848-H (JMA), 2006 WL 4117032, at *2 (S.D. Cal. Nov. 21, 2006) (citing *Alltrade*, 946 F.2d at 625). The Parties agree that all three prerequisites exist with regard to this case and the *Marshall* case.

NOW, THEREFORE, the Parties agree that this case should be transferred to the United States District Court for the Western District of Missouri pursuant to the first-filed rule, and therefore have asked the Court to do so through this joint motion. The Parties will then move the Missouri federal court to consolidate this case with the pending *Marshall* case. *White*, 2008 WL 542841, at *2 (S.D. Miss. Feb. 22, 2008) (FLSA case) (citing *Sutter Corp. v. P & P Indus., Inc.*, 125 F.3d 914, 920 (5th Cir. 1987)).

///

///

Jointly requested by the Parties on this 24th day of June, 2008,

/s/ George A. Hanson
STUEVE SIEGEL HANSON, LLP
George A. Hanson
Matthew L. Dameron
Legal Counsel for Plaintiff
460 Nichols Parkway, Suite 200
Kansas City, MO 64112
Telephone: (619) 235-4040
Facsimile: (619) 231-8796

ROSS DIXON AND BELL
Jason S. Hartley
Local Counsel for Plaintiff
550 West B Street, Suite 400
San Diego, CA 92101-3599
Telephone: (816) 714-7100
Facsimile: (816) 714-7101

/s/ Michael S. Lavenant
LANDEGGER, BARON & LAVENANT
Michael S. Lavenant, Esq. - State Bar No. 198765
michael@landeggeresq.com
Local Counsel for Defendant
15760 Ventura Boulevard, Suite 1200
Encino, California 91436
Telephone: (818) 986-7561
Facsimile: (818) 986-5147

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES
CASE NAME: Dawn D. Radcliffe v. R. J. Reynolds Tobacco Company
Case No.: 08 CV 0393 H POR

I declare as follows:

I am employed in the County of Los Angeles, California. I am over the age of 18 years, and not a party to the within action; my business address is 15760 Ventura Boulevard, Suite 1200, Encino, California 91436. I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

On June 25, 2008, I served a true and correct copy, with all exhibits, of the following documents described as:

JOINT MOTION TO TRANSFER MATTER TO OTHER DISTRICT COURT

☐ On the party or parties named below, by personally delivering a true copy thereof on at approximately _____ p.m. at ___________(Personal service)

☒ On the party or parties named below, by following ordinary business practice, placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the United States Postal Service, where it would be deposited for first class delivery, postage fully prepaid, in the United States Postal Service, that same day in the ordinary course of business, addressed as set forth below. (Regular office deposit)

☐ On the interested parties in the within action by placing the above documents in the United States mail for Express Mail delivery at 15760 Ventura Boulevard, Encino, California 91436 in a sealed envelope, with Express Mail postage thereon fully prepaid; by depositing copies of the above documents in a box or other facility regularly maintained by Federal Express, in an envelope or package designated by Federal Express Airbill

No. ***, with delivery fees paid by sender's account. (Code of Civil Procedure §1013(c).) (Overnight delivery service)

☐ On the interested parties in the within action by transmitting via facsimile machine to the name(s) and facsimile number(s) set forth below. (Facsimile)

☒ On the interested parties in the within action by transmitting via electronic mail by providing the document(s) to the Court's electronic filing system pursuant to their instructions on that website. (E-mail)

SEE ATTACHED SERVICE LIST

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 25, 2008 at Encino, California.

By: /s/ Ida Mamedova
Signature of Declarant

By: IDA MAMEDOVA
Type or Print Name of Declarant

SERVICE LIST

CASE NAME: Dawn D. Radcliffe v. R. J. Reynolds Tobacco Company
Case No.: 08 CV 0393 H POR

George A. Hanson
Matthew L. Dameron
Stueve Siegel Hanson, LLP
460 Nichols Parkway
Suite 200
Kansas City, MO 64112

Jason S. Hartley
Ross Dixon and Bell
550 West B Street
Suite 400
San Diego, CA 92101-3599